



**STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES**

MEMORANDUM

DATE: September 29, 2009

TO: Stephanie Vaughn, Manager
DSHS Rules and Policies Assistance Unit

FROM: Maureen Lally, Program Manager
Policy, Program Development and Training Unit
Residential Care Services

SUBJECT: Small Business Economic Impact Statement and Cost-Benefit Analysis
for Proposed Amendments to Chapter 388-76 WAC, Adult Family
Homes

SUMMARY OF PROPOSED RULES

The Department of Social and Health Services' Residential Care Services (RCS) is proposing amendments to Chapter 388-76 WAC, Adult Family Homes.

The purpose of this proposed rule making is to make editorial and clarifying changes and to make the rules consistent with current laws and standards.

Highlights of proposed changes:

- New sections on notice, liability insurance, management agreements, department authority, training requirements completed before application approved, qualifications of AFH personnel, personnel records.
- Repealing WAC 388-76-10190 Compliance with regulations-Required (duplicates another section).
- Clarified the definitions of physical abuse, adult family home, affiliated with an applicant, capacity, entity provider, entity representative, multiple facility provider, provider, and staff; added definitions for management agreement and manager.
- Clarified provider is ultimately responsible for the operation of the adult family home; financial obligations include personal and business obligations.

- Clarified determining factors in establishing the home's capacity.
- Added language the AFH license may be relinquished if no evidence of residents in the home for two consecutive inspections; if AFH fails to relinquish their license, remedies may be imposed.
- Consolidated disqualifying crime lists to make Home and Community Services and RCS lists consistent.
- Clarified that license may be denied if department is not allowed access to all parts of the home as authorized in RCW 70.128.090.
- Added clarifying language regarding the AFH notifying the department when residents are discharged for more than 24 hours.
- Clarified tuberculosis testing requirements.
- Clarified the need for sufficient food, uncontaminated in both everyday and emergency food supplies; emergency drinking water treatment and storage clarified.
- Clarified practitioners administer medications and medication disposal for current residents and those that leave the home.
- Clarified the abuse and neglect reporting language from chapter 74.34 RCW.
- Clarified residents' bedrooms must have closets; AFH must provide safe and usable outdoor space for residents.
- Clarified resident evacuation capabilities.
- Clarified notice requirements for accepting Medicaid as a payment source; in the investigation findings what constitutes notice.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT

Chapter 19.85 RCW, The Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. This statute outlines information that must be included in a Small Business Economic Impact Statement (SBEIS). Preparation of a SBEIS is required when a proposed rule has the potential of placing more than a minor impact on a business.

RCW 19.85.020 defines a "small business" as "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees."

RCS analyzed these proposed rules and concludes that the new requirements of liability insurance may impose a new cost to the adult family home that does not have an existing contract with DSHS (approximately 405 adult family homes or 14.5% without liability insurance and 85.5% of adult family homes with liability insurance). The cost of liability insurance ranges in price, the estimate that seems most consistent is \$2,500 per year.

RCS understands that adult family homes can deduct the cost of liability insurance when filing taxes with the IRS. RCS does not believe that the proposed rules will result in any job losses or gains for adult family homes. The proposed rule amendments do not disproportionately impact small businesses more than larger businesses.

EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS

RCS has determined that some of the proposed rules are “significant legislative rules” as defined by legislature. As required by RCW 34.05.328(1) (c), RCS has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs.

COSTS

- The liability insurance requirement for all adult family homes may impose additional costs to those adult family homes that do not currently have a contract with DSHS.
- DSHS uses input from internal and external stakeholders to determine cost impacts for the drafting of the rule.
- In addition, the draft language was posted on the Aging and Disability Services Administration internet website for anyone in the public to review and comment.
- To date, the department has received and considered all written comments on the draft language.

COST SAVINGS

Clarity of the proposed rule will save providers costs in time and dollars by:

- Reducing unnecessary confusion, citations, hearings and appeals;
- Reducing time and legal costs of appealing unclear rules;
- Reducing amount of technical support requests and dear provider letters mailed to providers for clarification of rule issues which reduces the amount of time providers need to keep current with requirements.

OTHER BENEFITS

The rules result in several benefits which include:

- The amendments are clearer, and easier to read, understand and apply;
- Residents will ultimately benefit from the rule revision because providers will be able to better understand and follow the requirements; and
- By adding liability insurance requirements for the 14.5% of adult family homes who currently may not have liability coverage, consumer protection will be assured all residents in adult family homes.

CONCLUSION

RCS concludes that the benefits of the proposed amendments exceed any possible cost. These rules continue to implement state laws and regulations related to adult family homes. RCS has complied with the appropriate sections of the Administrative Procedure Act and is prepared to proceed with the rule filing.

Please contact me by email at lallyma@dshs.wa.gov or by telephone at (360) 725-3204 if you have questions.